

## **The complaint**

Mr S says Nationwide Building Society ('Nationwide') unfairly declined a claim under section 75 of the Consumer Credit Act 1974 ('CCA').

As the credit card account is in Mr S's name, he's the only eligible complainant. However, as this case concerns contracts that he and his wife, Mrs S, entered into with different businesses, I'll refer to them both throughout.

## **What happened**

Mr and Mrs S attended a presentation on 24 November 2015. On the evidence I've seen, I can't say with whom – a point I return to below. Here, it suffices to say that on the same day Mr S paid:

- a business called 'Travel, Home & Adventure S.L' ('THA') £1,663.33 using his Nationwide credit card account; and,
- a business called 'Luxury Leisure Group' ('LLG') £1,663.40 using his Nationwide credit card account.

And on 30 December 2015, they paid a business called 'Slonce Marketing and Merchandising Coordination Center S.L' ('Slonce') £4,560 by bank transfer from an account that isn't with Nationwide.

Mr and Mrs S say they were misled at the presentation, for the reasons I explain below. And – with the help of a professional representative ('PR') – they wrote to Nationwide in July 2017 to make a claim under section 75 of the CCA.

Nationwide declined the claim. It said Mr and Mrs S had provided insufficient evidence to show that there had been a misrepresentation or breach of contract by either THA or LLG. And it said it wasn't legally answerable for any misrepresentation or breach of contract by Slonce because Mr and Mrs S hadn't used their Nationwide credit card account to pay Slonce.

One of our investigators didn't think it was unfair for Nationwide to decline the claim about THA and LLG based on the evidence that had been provided, and she agreed that Nationwide wasn't legally answerable for any misrepresentation or breach of contract by Slonce.

Mr and Mrs S asked that an ombudsman make a final decision, so the complaint was passed to me.

I issued a provisional decision on 8 December 2023, which included the following provisional findings:

*Section 75 of the CCA protects consumers who buy goods and services on credit. It says, in certain circumstances, that the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier.*

### What did Mr and Mrs S buy in November 2015?

As well as telling Nationwide what they remember about the presentation in November 2015, Mr and Mrs S have provided some or all of the paperwork they received at the time. I've carefully considered both to try to discern what they paid for.

- They've provided 4 pieces of paper that refer to LLG:
  1. An 'Accommodation Contract', which says: 'Included in the initial registration fee is 1 week of accommodation in the Canary Islands, and the choice of 1 week of accommodation in Europe or Worldwide'. It's dated 24 November 2015, it includes Mr and Mrs S's personal details and it has been signed by them both. The contract price is £1,700 (including taxes). The 'contract' says it's 'non transferable' (sic) and the accommodation 'in the Canaries' cannot be cancelled. And it says payment was received on 24 November 2015.
  2. A page with the words, 'Reservation to be confirmed upon receipt of payment' at the top. This page includes more information about the accommodation, and it says again that the accommodation can't be 'modified or cancelled'. It has also been signed by Mr and Mrs S.
  3. A page dated 24 November 2015, which says 'the accommodation booked by [LLG] between the dates of 22 November 2015 and 29 November 2015 in [hotel name] has been satisfactory and to our requirements'. It says the 'total cost' was €434.13, there was a €54 'supplement', and that the 'balance due' is €0. It was signed by Mr and Mrs S on 24 November 2015.
  4. Finally, there's a 'credit or debit card authorisation form', that authorises LLG to process a payment of £413.92 and £43. It was signed by Mr S on 22 January 2016.
- They've provided 2 pieces of paper that refer to THA:
  1. A 'subscription application' form, which says: '[THA is] established under Law to allow members to access and participate in [THA] Credits Entertainment, Home and Leisure Reservation System based on the appropriate credits. The Applicant(s) hereby apply for Credits of [THA] and agree to use the credit currency applicable'. It's dated 24 November 2015, it includes Mr and Mrs S's personal details and it has been signed by them both. The contract price is £1,700 (including taxes). The application form says the 'subscription fees are non-refundable and this agreement cannot be cancelled after commencement...'. And it says payment was received on 24 November 2015.
  2. The 'terms and conditions of [THA] Sovereign Credits Use'. It says the agreement is for 'the provision of Lifestyle and Leisure services', and 'the product is the Reservation system' by which THA delivers 'Entertainment and Leisure Services to the Credits Holder'. It continues, 'the client must understand and agree, they are not purchasing the product primarily for accommodation or travel'. It was signed by Mr and Mrs S on 24 November 2015.
- They've provided 6 pieces of paper that refer to Slonce:
  1. An 'Application for the Exclusivity of Slonce Travel', which includes Mr and Mrs S's personal details and says the total cost is £4,600 – which will be taken by 'bank transfer' on 24 December 2015. It was signed by Mr and Mrs S on 24 November 2015. It doesn't say what service is to be

provided by Slonce.

2. A page called 'Terms and Conditions', which says:

- '...upon [payment] the person/s will be entitled to full usage of Slonce Travel facilities.'
- 'The duration of this application is for a period of 364 days...after the 364 day period has elapsed the person/s can renew for no additional cost...'
- 'All travel costs, insurance, car hire or any other expenses incurred in connection with the usage and its benefits are not included.'
- 'All accommodation and flight benefits are subject to availability.'
- 'The week of accommodation in the Canary Islands is to be used before the Exclusive use of the Travel Agency.'
- 'The purchaser understands that the Product is not a long term holiday product (LTHP) or Timeshare...'

3. A page dated 24 November 2015, which simply says: 'We confirm that we have received £40 from [Slonce] for services provided.' It was signed by Mr and Mrs S on 24 November 2015.

4. Another page dated 24 November 2015 says it's 'written confirmation of the option to obtain assistance in applying for finance to purchase the products offered by [Slonce]'. It says Slonce offers 'full service in assistance in arranging finance', but it's 'not a finance company, and has contracted professional third party brokers to enable us to offer our customers this intermediate service'.

5. A third page dated 24 November 2015 says it's 'written confirmation [Slonce] will instigate a claim on your behalf for the following amount £20,000 for the failed Cash Back purchase.' It says:

*'All claims will be settled in full directly to yourselves, at which point you will be expected to pay back 20% of the total claim. Therefore the nett figure would equate to £16,000.'*

*Please note, from registering the claim, to having the monies paid into our client account, will take a maximum of 60 days.*

*[Slonce] is not a finance company, and is currently working with a third party firm of Solicitors, and various advisory companies, who specialise in reclaims, to enable us to offer our customers this intermediate service.'*

6. A fourth page dated 24 November 2015 says it's 'written confirmation [Slonce] will instigate a claim on your behalf for the amount of £40,065.52 (subject to all maintenance payments being up to date and all paperwork in order).' It says:

*'All claims will be settled in full directly to yourselves, at which point you will be expected to pay back 20% of the total claim. Therefore the nett figure would equate to £32,052.42.'*

*Please note, from registering the claim, to having the monies paid into our client account, will take a maximum of 60 days.*

*[Slonce] is not a finance company, and is currently working with a third*

*party firm of Solicitors, and various advisory companies, who specialise in reclaims, to enable us to offer our customers this intermediate service.'*

- *They've provided 2 other pieces of paper:*
  1. *A page called 'Worldwide Holidays', which is supposedly 'written confirmation' that Mr and Mrs S 'have been awarded 5 Worldwide Holidays' that 'consist of 2 free return flights and 7 days free accommodation worldwide.' Elsewhere, it reiterates that these 'Worldwide Holidays will be awarded completely free of charge' and that '[t]here are no additional costs'. It's not clear from the paperwork I've seen if 'Worldwide Holidays' is the name of the supplier as well as a description, but there's no other supplier mentioned.*
  2. *A blank 'Holiday Request Form', that refers to a supplier called 'Golden Travel' and 'Golden Travel Clubs' and includes some 'General Terms and Conditions' that are mostly illegible on the copy I've seen.*

*Having carefully considered all the available evidence, I think Mr and Mrs S purchased:*

- *1 week's accommodation in the Canary Islands and 1 week's accommodation somewhere else from LLG – although LLG also appears to have supplied the holiday to Tenerife between 22 November 2015 and 29 November 2015, during which the meeting took place; and,*
- *800 'sovereign credits' or some sort of subscription from THA, which apparently gave Mr and Mrs S access to THA's reservation system – it's not clear to me what service THA was actually (or supposed to be) providing or why Mr and Mrs S would choose to pay for it.*

*Separately, Mr and Mrs S paid for:*

- *1 year's use of 'Slonce Travel facilities' – which appears to be some sort of travel agency although, again, it's not clear to me precisely what service Slonce was actually (or supposed to be) providing or why Mr and Mrs S would choose to pay for it.*

*And they signed a contract with Slonce for it to:*

- *Help them apply for finance to pay for the 1 year's use of 'Slonce Travel facilities'.*
- *Make a claim on their behalf 'for a failed Cash Back purchase'. It's not clear to me what this claim was for, but it's clear Slonce told Mr and Mrs S that it would take 'a maximum of 60 days' from registering the claim for them to receive payment of £20,000 – of which, they'd pay Slonce 20% and keep the rest (£16,000). (I'll refer to this as the 'Cash Back claim'.) I can't see that they paid Slonce any money upfront for this service.*
- *Make a claim on their behalf for 'the amount of £40,065.52'. Again, it's not clear to me what this claim was for. Mr and Mrs S say it was for mis-sold timeshare, and that's consistent with the reference to 'maintenance fees' in the letter and with what we know about Slonce from similar complaints that have been referred to our service. I'll therefore refer to this as the 'Timeshare mis-sale claim'. Again, Slonce told Mr and Mrs S that it would take 'a maximum of 60 days' from registering the claim for them to receive payment – of which, they'd pay Slonce 20% and keep the rest (£32,052.42). As before, it doesn't look like Mr and Mrs S paid Slonce any money upfront for this service.*

*It's not clear to me from whom they were to receive five free holidays, or how or why Golden Travel were involved.*

*Why are Mr and Mrs S unhappy?*

*When the PR first wrote to Nationwide, it said the seller told Mr and Mrs S:*

- if they paid around £8,000, 'they would be able to recoup monies lost on previous Timeshares';*
- the £8,000 would go towards £60,000 worth of credits that would last five years – and they were guaranteed to get 20% off any holiday from any travel agent;*
- they would get five free holidays anywhere in the world; and,*
- they would get cheaper holidays if they used Golden Travel – but when they later enquired about a holiday to Australia, the price they were quoted by Golden Travel was significantly more than they were quoted by others.*

*And in an undated, handwritten note, Mr and Mrs S say:*

*'We were contacted out of the blue by Slonce a company also supposed trying to cancel contracts and reclaim money.' (sic)*

*Was there a breach of contract or misrepresentation by the supplier?*

*Based on what I've seen so far, I think Mr and Mrs S were misled.*

*I accept their evidence that they received a call 'out of the blue' from a company that said it would help them cancel certain contracts and recover the money they'd paid, and that Mr and Mrs S went to the presentation on 24 November 2015 for this reason.*

*I've carefully considered what Mr and Mrs S were told about the Cash Back and Timeshare mis-sale claims. Here, surprisingly (or perhaps unsurprisingly), the paperwork is clear: the 'written confirmation' says Slonce will instigate the claims and Mr and Mrs S will receive £20,000 and £40,065.52 within a 'maximum of 60 days' from registering the claims. This statement is unambiguous and undoubtedly false. I think it's very likely that something similar would have been said orally by whoever sold Mr and Mrs S this package of services. And I think that person must have known Slonce couldn't guarantee any payment of compensation, either within such a short timeframe or at all. Any claim made to Mr and Mrs S's timeshare provider, or any other party that might be liable, was simply that, a claim, with no guarantee it would succeed still less secure a specified sum. What's more, claims like this take time: it was fanciful to say any payment would be made within 60 days. I can't see how Slonce or the salesperson had any reasonable grounds to believe it could procure such an outcome. The claims were, therefore, misrepresented.*

*And I think the Cash Back and Timeshare mis-sale claims were the main reasons why Mr and Mrs S entered into the various contracts. I say this for two reasons. First, this was, after all, why they attended the presentation in the first place. Second, as I've explained above, it's not clear to me exactly what services or benefits they were supposed to receive, if any, from THA or 'Slonce Travel facilities', or why, therefore, Mr and Mrs S would choose to pay for them unless they were ultimately sold as part of a package that included a guaranteed refund of a large sum of money.*

*It follows that I don't think Mr and Mrs S would have entered into any of the contracts 'but for' the misrepresentation about of the Cash Back and Timeshare claims.*

*For the avoidance of doubt, Mr and Mrs S don't need to show that the salesperson misrepresented the services offered by LLG or THA, as well as Slonce, just that the salesperson made a false statement of fact or law that induced them to enter those contracts, which I think they did.*

*Is Nationwide legally answerable for the misrepresentation?*

*As I explained at the start, I don't know if the person Mr and Mrs S met on 24 November 2015 was from Slonce, THA, LLG, a representative of all three or someone else. For the payments Mr S made with his Nationwide credit card account, it doesn't matter. Mr and Mrs S entered into a contract with THA and LLG on the day, so the salesperson was either from THA and/or LLG, or was the agent of one or both, otherwise the contracts couldn't be formed.*

*Under section 75 of the CCA, Nationwide is legally answerable for any misrepresentation by THA, LLG, their employees or agents (when they're acting in that capacity).*

*It follows that I think Nationwide should pay Mr S the £1,663.33 he paid THA and the £1,663.40 he paid LLG, with simple interest on both at 8% per year from the date the payments were made until he gets the refund.*

*However, I don't think it needs to refund the payment to Slonce. This was made by bank transfer from an account that isn't with Nationwide. It isn't therefore legally answerable for any misrepresentation by Slonce or its employees or agents. And as I can't say what the salesperson's relationship was with the various businesses involved, I can't say that Nationwide's liability extends to this payment for any other reason.*

PR responded to my provisional decision on Mr and Mrs S's behalf. It says the companies have now been dissolved and Slonce is operating under a different name. It says the companies are or were registered at the same address on the Spanish equivalent of Companies House. And it says this should be sufficient evidence to prove that they are all run by the same person, and it argues that Mr S should therefore get a refund of the money he paid Slonce too.

Nationwide says it accepts my provisional decision and has agreed to pay Mr S the compensation I said I was minded to award.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I shall briefly address PR's response to my provisional decision.

On the limited information that's available, I don't think it's possible to understand the relationship between the three companies, although I accept that they are connected in some way based on the evidence provided by PR. But even if they're owned or run by the same person, it doesn't follow that Nationwide must also refund the £4,560 Mr S paid Slonce by bank transfer. If a person has a claim against a business, he doesn't have a claim against a different business simply because it's owned or run by the same person. Here, Nationwide's liability mirrors THA and LLG's respective liabilities. I would therefore need to be persuaded that Mr S could successfully recover the payment to Slonce from either THA or LLG. On the evidence I've seen, I don't think he could. Put simply, too much is unknown about what happened on 24 November 2015 and in what capacity the salesperson was acting at all material times. It follows that I don't think Nationwide needs to refund the

payment Mr S made to Slonce.

### **My final decision**

I uphold this complaint and direct Nationwide Building Society to pay Mr S the £1,663.33 he paid THA and the £1,663.40 he paid LLG, with simple interest on both at 8% per year from the date the payments were made until he gets the refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 14 March 2024.

Christopher Reeves  
**Ombudsman**